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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

BARTELL RANCH, LLC, et al.,  
Plaintiffs,

v.

ESTER M. McCULLOUGH, et al.,  
Defendants,

WESTERN WATERSHEDS PROJECT, et  
al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
THE INTERIOR, et al.,

Defendants,

and

LITHIUM NEVADA CORP.,

Defendant-Intervenor.

***Lead Case:***  
**Case No. 3:21-cv-00080-MMD-CLB**

**LITHIUM NEVADA CORP.'S  
OPPOSITION TO TRIBAL  
PLAINTIFFS' MOTION TO EXTEND  
TIME TO REVIEW THE  
ADMINISTRATIVE RECORD**

Defendant-Intervenor Lithium Nevada Corporation (“Lithium Nevada”) files this opposition to the Burns Paiute Tribe (“BPT”) and Reno-Sparks Indian Colony’s (“RSIC”, together, “Tribal Plaintiffs”) motion to extend time to review the administrative record and file their opening motion for summary judgment. ECF 183.

### INTRODUCTION

This case has now been pending a year and already has experienced delay because the Tribal Plaintiffs waited five months to seek intervention, filing their emergency motion on the eve of the first hearing on Plaintiffs’ Motion for Preliminary Injunction. Now they exaggerate the burden of reviewing the updated record in multiple ways and transparently do so to delay this Court’s decision on the merits of this case. The Tribal Plaintiffs’ current posture that the previously agreed-upon schedule is “virtually impossible,” Mot. at 5, is a clear about-face from their initial position in their motion to intervene where they promised the Court that the other “parties will not be prejudiced” and that granting their intervention “would not delay relief.” ECF 43 at 8. The Court should not countenance their unsubstantiated request for additional delay. Furthermore, the Court previously only allowed the addition of deliberative documents to the National Historic Properties Act (“NHPA”) record. ECF 155 at 14–15. As analyzed below, only a small portion of those deliberative records produced relate to the Tribes’ claims.<sup>1</sup>

The Tribes’ claimed harms from a three-week review period are also dramatically embellished. The Tribes highlight as a burden the privilege log’s description of the number of pages, including the page numbers of all the entirely withheld documents—documents that by virtue of that designation in the privilege log are not available for review. Rather, there are only 18 redacted documents in the privilege log that BLM classified as relating to Tribal

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<sup>1</sup> The Tribes suggest yet another new claim in their motion, arguing that they are opposing BLM’s attempts “to limit Tribal, public, and judicial review of the Project.” Mot. at 5. As exhaustively briefed, the Tribes did not raise claims regarding the public consultation process nor bring their claims as members of the public only. *See, e.g.*, ECF 92 at 17. Furthermore, the Tribes have never before claimed that BLM is attempting to rush *judicial* review of their claims, and impliedly cast the court as an opposing party. This is inappropriate, impugns the neutrality of the Court, and ignores that it is the lack of any likelihood of success on the merits that puts them in their current position.

1 consultation. The privilege log itself contains only 84 entries and is not difficult to read or  
2 understand. *See* Exhibit 1.<sup>2</sup>

3 The Tribes’ protestations omit that many of the newly-added documents to the NHPA  
4 record were received from the Tribes themselves. Finally, focusing on pages rather than  
5 documents obscures the fact that the increased page volume in the EIS decision record is due  
6 to the inclusion of documents that do not pertain to the Tribes’ claims under the National  
7 Environmental Protection Act (“NEPA”) which all relate to either Tribal consultation or  
8 archaeological and cultural resource impacts, and a few earlier drafts of large documents  
9 already included in the initial record. The additional documents added to the NHPA and EIS  
10 Decision Records will not require the Tribes spend 60 days reviewing the record and Lithium  
11 Nevada urges the Court to consider the factual realities of the record and deny the Tribes’  
12 motion to extend time to review.

### 13 ARGUMENT

#### 14 **A. The Newly Produced Documents in the NHPA Record Include Documents** 15 **from the Tribes Themselves.**

16 The Tribes maintain that the 139 documents added to the NHPA record functionally  
17 “double” the record, but do not take into account the substance of those documents. Sixteen  
18 (about 12% of the total new documents) are documents that were sent from or to the Tribes,  
19 meaning they include information that the Tribes themselves produced or received already.  
20 These documents require no review for the Tribes. Additionally, the Tribes’ previously  
21 asserted need to review deliberative documents only encompasses a minimal number of the  
22 additional documents. The Tribes previously asserted in their motion to supplement the record

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23 <sup>2</sup> The Tribes further raise the specter of possible “objections” prompted by the final record. Mot.  
24 at 3, 6. But they do not identify any grounds for those objections, and hypothetical further actions  
25 to delay this litigation are not substantive reasons for the Court to extend time to review the  
26 record. The Court previously denied inclusion of the Tribes’ proffered documents, BLM  
27 affirmatively included certain requested documents, and the Court granted the Tribes’ motion to  
28 supplement request for deliberative documents. *See* ECF 155 at 14–15. BLM certified that it  
provided all of those relevant deliberative documents, and none of the entirely withheld  
documents in the privilege log are indicated as relating to the Tribal Plaintiffs’ claims. *See* Ex.  
1. Where no factual basis exists to make further objections to the record and the parties already  
have fully briefed objections to completeness this Court should not allow a further delay before  
briefing on the merits for what Plaintiffs appear to seek as an endless record dispute process.

1 their interest in specific deliberative documents, namely the Preliminary Draft EIS (174 pages),  
2 the Bengston Report (326 pages), and meeting notes, *see* ECF 155 at 11–13, which comprise  
3 a mere 30 additional documents (ranging from one to eleven pages each) in the final NHPA  
4 record.

5 Furthermore, a full 28 documents added to the NHPA record (20% of the new  
6 documents) are exhibits from letters sent by Plaintiff Edward Bartell regarding his water  
7 claims, and have nothing to do with the NHPA tribal consultation process or the Tribes’ claims.  
8 Omitting those documents, the NHPA record only grew by 95 documents, none of which are  
9 over 20 pages in length and average 6 pages per document. And significantly, the only  
10 voluminous documents in the NHPA record (aside from Mr. Bartell’s emails) are the draft EIS  
11 (174 pages) and the draft HPTP (88 pages), documents that the Tribes have already reviewed  
12 the final drafts of and would not need significant time to review.

13 The Tribes cannot rely on the number of pages alone to justify an extension that the  
14 Tribes anticipate will delay the Project by a year, particularly where Lithium Nevada would  
15 be harmed by further delay. *See* ECF 167 at 11 (noting that “delay would unduly prejudice  
16 the other parties to this case”). A meaningful review of the additional documents in the NHPA  
17 record demonstrate that only a subset of the documents are pertinent to the Tribes’ claims and  
18 new to the Tribes, meaning the burden to review will be minimal and achievable in the three  
19 weeks currently allocated. The Tribes have had over four full months to prepare their opening  
20 motion for summary judgment. *See* ECF 113 at 2. There is no reasonable justification to delay  
21 their filing by another three months for a review of these additional documents that they knew  
22 were being produced.

23 **B. The Vast Majority of the Newly Produced Documents in the EIS Decision**  
24 **Record do not Pertain to the Tribes’ Claims.**

25 Of the additional 696 entries to the EIS Decision record, there are only 19 *document*  
26 *entries* indicated by BLM as relating to tribal consultation, the longest of those documents  
27 amounting to only 13 pages. This data demonstrates that the Tribes do not need an additional  
28 60 days to review the EIS Decision record—they will only need to substantively review 19

1 additional documents and will simply scan the remaining document descriptions in the index  
2 to determine whether any further documents could be relevant to the subject matter of their  
3 claims. Each document entry is labeled and categorized in the record index and the majority  
4 of the EIS Decision record entries are clearly not relevant to the Tribes' claims. If a document  
5 entry in the record index is categorized by BLM as a "Water" document, labeled as an email  
6 transmitting three copies of Water-related documents for the EIS's NEPA analysis, it should  
7 not be assumed that the Tribes will need to review the Water document's pages in its review  
8 of the EIS Decision record. The burden to the Tribes to review the EIS Record should be  
9 evaluated based on what documents in that record actually pertain to the Tribes' claims.

#### 10 CONCLUSION

11 Where the Tribes' motion exaggerates the burden of reviewing the supplemental  
12 documents BLM produced for the record by claiming it will need time to review documents  
13 withheld in the privilege log and documents they themselves provided to the BLM, the Court  
14 should look closely at the actual nature of the documents produced. When evaluated against  
15 the Tribes' pending claims on the merits, the result is that the Tribe will only substantively need  
16 to review 162 additional documents (the 111 documents in the NHPA record, omitting the  
17 Bartell documents and the Tribes' own documents, combined with the 19 documents in the EIS  
18 Decision record and 32 redacted documents in the Privilege Log). That review cannot be  
19 assumed to take longer than the three weeks already allotted following over four months the  
20 Tribe has had to review the rest of the record and prepare its opening motion for summary  
21 judgment in a case that has been pending for more than a year. For all these reasons, the Court  
22 should deny the Tribes' motion to extend time to file summary judgment briefing.

23 Dated: March 3, 2022.

24 /s/ Laura K. Granier

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2022, I filed the foregoing using the United States District Court CM/ECF, which caused all counsel of record to be served electronically.

/s/ Laura K. Granier

Laura K. Granier (SBN 7357)

**TABLE OF EXHIBITS**

Exhibit #	Document
1.	Privilege Log

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